

THIS PRINT COVERS CALENDAR ITEM NO. : 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: System Safety

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Federal General Services Administration Blanket Purchase Agreement No. 2016-01 and SFMTA Contract No. 2016-78, both for software license and maintenance services for DriveCam event recorders with Lytx, Inc., for an amount not to exceed \$2,500,000 and term of five years.

SUMMARY:

- In FY09, the SFMTA entered into a one-year sole source contract with Lytx, Inc. to install their DriveCam video event recorders. The purpose was to improve transit operator safety
- The current Agreement expires on June 30, 2016.
- The new Blanket Purchase Agreement is for a five-year term from July 1, 2016 through June 30, 2021 and is based on existing federally negotiated discounted pricing.
- The scope of work includes software and technical support such as daily downloads of recorded events, filtering and factual reporting of driver behavior and performance.
- In addition, on May 24, 2016, the Contracts Monitoring Division issued a sole-source waiver for Contract No. 2016-78 for Lytx, Inc. to provide on-going software maintenance services to the SFMTA during the five-year term.

ENCLOSURES:

1. SFMTAB Resolution
2. Blanket Purchase Agreement 2016-01
3. Lytx Contract 2016-78

APPROVALS:

DATE

DIRECTOR _____

6/17/16

SECRETARY *R. Boomer* _____

6/17/16

ASSIGNED SFMTAB CALENDAR DATE: June 28, 2016

PURPOSE

Authorizing the Director of Transportation to execute Federal General Services Administration Blanket Purchase Agreement No. 2016-01 and SFMTA Contract No. 2016-78, both for software license and maintenance services for DriveCam event recorders with Lytx, Inc., for an amount not to exceed \$2,500,000 and term of five years.

GOAL

Federal General Services Blanket Purchase Agreement No. 2016-01 and SFMTA Contract No. 2016-78 will assist in the implementation of the following goals, objectives and initiatives in the SFMTA Strategic Plan:

- Goal 1: Create a safer transportation experience for everyone
 - Objective 1.1 Improve security for transportation system users.
 - Objective 1.3 Improve the safety of the transportation system.

DESCRIPTION

In FY09, the SFMTA entered into a one-year sole source contract with Lytx, Inc. to install their DriveCam video event recorders. The purpose of this contract was to improve transit operator safety. At that time, Lytx was the only company that used a video event recorder to track and monitor transit operator behavior so that risks can be identified and corrected. Installation of the recorders was completed in August 2009.

Lytx’s DriveCam video event recorder is mounted on the windshield behind the rear-view mirror and captures sights and sounds inside and outside SFMTA rubber tire transit vehicles. Exceptional forces (e.g. hard braking, swerving, collision, etc.) cause the recorder to create video and audio recordings of the critical time period before and after the triggered event. Saved events are downloaded, analyzed and used to improve driving behavior and assess liability in collisions. The storage, hosting of recorded events in a database server and analysis of recorded events is provided by Lytx. SFMTA then uses the analysis to identify, assess and mitigate risk with the objective of reducing accidents and collisions.

While one other vendor recently developed the ability to provide a driver risk management system that generates video and audio recordings of actual incidents and provides feedback to correct unsafe behavior, the existing SFMTA rubber-tire transit vehicle fleet is equipped with the DriveCam video event recorders and technology. Since the DriveCam video event recording system is proprietary, Lytx is the only vendor that can provide maintenance and support for this system.

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On October 1, 2010, the SFMTA entered into a one-year contract with Lytx, Inc. to provide software and maintenance services on the DriveCam video event recorder systems that were installed on MUNI rubber tire transit vehicles. In October 2011, the SFMTA renewed this contract for one year. In October 2012, the SFMTA entered into a new contract for an additional three years in order to take advantage of the federally negotiated discounted pricing under the General Services Administration's Blanket Purchase Agreement.

The current Federal General Services Blanket Purchase Agreement expires on June 30, 2016. The new Blanket Purchase Agreement is for a five-year term, from July 1, 2016 through June 30, 2021, and is based on the General Service Administration's Federal Supply Service agreement which reflects competitively negotiated discounts for government clients. In addition, on May 24, 2016, the Contracts Monitoring Division issued a sole-source waiver for Contract No. 2016-78 for Lytx, Inc. to provide on-going software maintenance services to the SFMTA during the five-year term.

PUBLIC OUTREACH

There was no public outreach done for this contract.

ALTERNATIVES CONSIDERED

One other vendor has recently developed a system with similar capability to provide the SFMTA with the kind of services Lytx does. However, since the DriveCam system is proprietary and the SFMTA's rubber tire transit vehicle fleet is equipped with the DriveCam technology, Lytx is the only vendor that can provide on-going maintenance and support for this system. Additionally, the contract with Lytx is based on a Federal Supply Schedule administered by the General Services Administration and reflects negotiated discount rates for government buyers.

FUNDING IMPACT

Operating funds totaling \$500,000 per year are budgeted in the SFMTA's FY17 and FY18 budgets for the Lytx software and maintenance services contract. SFMTA staff intends to submit a funding request for this contract for the SFMTA's FY19 – FY21 budgets.

ENVIRONMENTAL REVIEW

On May 12, 2016, the SFMTA, under authority delegated by the San Francisco Planning Department, determined that the execution of Blanket Purchase Agreement No. 2016-01 and SFMTA Contract No. 2016-78 is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and/or 15378(b).

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A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney has reviewed this report.

The Contract Monitoring Division issued a sole source waiver on May 24, 2016 to enter into Contract No. 2016-78.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Federal General Services Administration Blanket Purchase Agreement No. 2016-01 and SFMTA Contract No. 2016-78, both for software license and maintenance services for DriveCam event recorders with Lytx, Inc., for an amount not to exceed \$2,500,000 and term of five years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) staff request approval for the Director of Transportation to execute Federal General Services Blanket Purchase Agreement No. 2016-01 and SFMTA Contract No. 2016-78, with Lytx, Inc. for a not-to-exceed amount of \$2,500,000 and term of five years for software and maintenance services for the proprietary DriveCam video event recorders that are located on the SFMTA’s rubber tire transit vehicles; and,

WHEREAS, The proprietary DriveCam video event recorder is mounted on the windshield behind the rear-view mirror to capture sights and sounds inside and outside SFMTA rubber tire transit vehicles and exceptional forces, such as hard braking, swerving, collisions, cause the recorder to create the video and audio recordings which Lytx stores in a database server and performs analysis of recorded events for SFMTA to use to identify, assess and mitigate risk in order to reduce accidents and collisions; and,

WHEREAS, On May 24, 2016, the Contract Monitoring Division granted a sole source waiver for the software and maintenance of the proprietary video event recorders installed on rubber tire transit vehicles for the period of July 1, 2016 – June 30, 2021; and,

WHEREAS, On September 15, 2015, the Director of Transportation executed a sole source contract renewal with Lytx for the software and maintenance of the proprietary video event recorders installed on rubber tire transit vehicles for the period of October 1, 2015 – June 30, 2016; and,

WHEREAS, On May 12, 2016, SFMTA staff, under authority delegated by the San Francisco Planning Department, determined that execution of Blanket Purchase Agreement No. 2016-01 and SFMTA Contract No. 2016-78 is not a “project” under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and/or 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; and

WHEREAS, Operating funds totaling \$500,000 per year are budgeted in System Safety’s FY17 and FY18 budget for the Lytx software and maintenance services contract and SFMTA staff intends to submit a funding request for this contract in the SFMTA’s FY19 – FY21 budgets; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Federal General Services Blanket Purchase Agreement No. 2016-01 and SFMTA Contract No. 2016-78 with Lytx, Inc. for software and maintenance services for DriveCam event recorders, for for a not-to-exceed amount of \$2,500,000 and term of five years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 28, 2016.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Enclosure #2



**BEST VALUE
BLANKET PURCHASE AGREEMENT
FEDERAL SUPPLY SCHEDULE**

San Francisco Municipal Transportation Agency (SFMTA)

In the spirit of the Federal Acquisition Streamlining Act, SFMTA and Lytx, Inc. enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract Number GS-35F-0623S.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result *is* to create a purchasing mechanism for the ordering activity that works better and costs less.

Signatures:

CITY

San Francisco Municipal Transportation Agency

By: _____

Edward D. Reiskin
Director of Transportation

Date

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____

John I. Kennedy
Deputy City Attorney

AUTHORIZED BY:

CONTRACTOR

Lytx, Inc.

By: _____

William J. Ruff
Vice President, Market Operations

Date

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

Resolution No: _____

Adopted: _____

Attest: _____

Roberta Boomer, Secretary
SFMTA Board of Directors



BPA NUMBER 2016-01

(SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY)
BLANKET PURCHASE AGREEMENT

Pursuant to GSA Federal Supply Schedule Contract Number(s) GS-35F-0623S, blanket Purchase Agreements, the Contractor agrees to the following terms of a Blanket Purchase Agreement (BPA) EXCLUSIVELY WITH San Francisco Municipal Transportation Agency (SFMTA):

- (1) The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract and the SFMTA Statement of Work, Three-Party Escrow Service Agreement, and Software License and Maintenance Services Agreement which are incorporated into this BPA by reference:

MODEL NUMBER/PART NUMBER	*SPECIAL BPA DISCOUNT/PRICE
ALL ON ADDENDUM A TO SFMTA STATEMENT OF WORK (SOW)	PRICES AS SPECIFIED IN ADDENDUM A TO SOW

- (2) Delivery:

DESTINATION	DELIVERY SCHEDULES/DATES
As required by delivery order	As required by delivery order

- (3) The San Francisco Municipal Agency estimates, but does not guarantee, that the volume of purchases through this agreement will be 1,000.
- (4) This BPA does not obligate any funds.
- (5) This BPA expires on 06/30/2021 or at the end of the GSA Schedule contract period, whichever is later.
- (6) The following office(s) is hereby authorized to place orders under this BPA:

OFFICE	POINT OF CONTACT
Safety Division	Robin Courtney

- (7) Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.

- (8) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:
- (a) Name of Contractor
 - (b) Contract Number
 - (c) BPA Number
 - (d) Model Number or National Stock Number (NSN)
 - (e) Purchase Order Number
 - (f) Date of Purchase
 - (g) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and
 - (h) Date of Shipment
- (9) The requirements of a proper invoice are specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.
- (10) The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.

The following terms and conditions are incorporated into Blanket Purchase Agreement ("Blanket Purchase Agreement" or "BPA") Number 2016-01 between the City and County of San Francisco, through its San Francisco Municipal Transportation Agency ("SFMTA" or "City"), and Lytx, Inc. ("Lytx" or "Contractor") under GSA Federal Supply Schedule Contract GS-35F-0623S (the "GSA Schedule") including the GSA Price Schedule ("GSA Price Schedule") unless otherwise noted.

The following describes all possible equipment and services for which the SFMTA may issue a purchase order until June 30, 2021, but shall not obligate the SFMTA, in any manner, to procure any or all of the equipment or services specified. By executing the Blanket Purchase Agreement, Contractor agrees to provide the equipment and services as specified in any purchase order issued in compliance with the GSA Schedule and the Blanket Purchase Agreement.

PART 1 – GENERAL

1.01 DESCRIPTION

- A. The equipment and services specified in this section shall consist of furnishing certain Lytx parts, accessories and services:
 - 1. Managed Services Renewal services ("Managed Services Renewal") including software maintenance and technical support in accordance with the Software License and Maintenance Services Agreement. The services shall include program

management, software maintenance and technical support, daily downloads (to the extent applicable vehicles are used daily) of recorded events from all SFMTA vehicles in which an Event Recorder is installed and operational, filtering of these events, factual reporting of driving behavior, performance and results reporting, and hosting and system maintenance. The SFMTA may purchase the following maximum of Managed Services Renewals based on the existing and estimated increases in the fleet:

July 1, 2016 – June 30, 2017	1,000
July 1, 2017 – June 30, 2018	1,000
July 1, 2018 – June 30, 2019	1,000
July 1, 2019 – June 30, 2020	1,000
July 1, 2020 – June 30, 2021	1,000

The price for these services are set forth in the GSA Price Schedule and Addendum A (the SFMTA Pricing Schedule) of this Statement of Work ("Addendum A").

2. Training and as-needed expert witness support as provided herein. The price for these services are set forth in the GSA Price Schedule and Addendum A.
 3. Other items as provided herein. The price for these services are set forth in the GSA Price Schedule and Addendum A.
- B. The SFMTA may issue multiple purchase orders against the BPA for the purchase of a specific quantity of Managed Service Renewals and related services and parts.

1.02 QUALITY ASSURANCE/QUALITY CONTROL

- A. The Contractor shall use only skilled workers who are thoroughly trained and experienced in the necessary crafts methods for proper performance of the work required under these Specifications.
- B. All software shall be the most current, stable version available for the proposed equipment.
- C. The Contractor shall establish, maintain and enforce a Quality Assurance Program. The Quality Assurance Program shall demonstrate that all activities affecting quality are correctly performed by competent people and is subject to SFMTA review upon reasonable request. These requirements shall apply to all BPA activities.

1.03 TRAINING

- A. SFMTA shall have the option to purchase training services related to replacement of DriveCam equipment on SFMTA rubber tire revenue vehicles, Managed Services (event scoring and documentation database), login and access, and on-site training classes for designated staff on software usage, event review and driver coaching.
- B. All Contractor employees who will be working on this project shall undergo SFMTA conducted safety training. Time spent by Contractor's employees in any SFMTA training

will be billed to SFMTA at Contractor's then current hourly rates as indicated in purchase order.

PART 2 – PRODUCTS

Part numbers identified herein are subject to change from time to time. A list of updated part numbers will be provided to SFMTA upon request.

2.01 Hardware

- A. The Contractor shall provide the following replacement hardware as Open Market Items under the GSA Price Schedule:
 - 1. GPS antenna – part number PER-GPS-0001 (not applicable for internal GPS)
 - 2. Remote Panic Button – part number 2015-00005-00006
 - 3. Torx Wrench DC3 – part number 1130-00101-0000
 - 4. 5-Port or 6-Port (as available) Hub Connector – part number PER-CAT-0002
 - 5. Wiring bundle, electrical connects, securing tie down straps, mounting brackets, accessories, power harness and miscellaneous hardware and equipment.

2.02 Software

- A. The Contractor shall provide the following software including any updates or patches:
 - 1. 12-month renewal DriveCam Online Subscription – GSA item number 3235-000DOL –SUBS

2.03 Services

- A. The Contractor shall provide the following services:
 - 1. Managed Service Renewal
 - 2. Technical services to support the transfer to SFMTA of all SFMTA data, metadata, and videos collected by Event Recorders during the term of the BPA on a daily basis in both DCE file and Microsoft WMV formats as described in the scope for such services set forth in Addendum B. The information shall be transferred via a secure FTP for which SFMTA has access to the site to download the data. The data shall be maintained on the secure FTP site for a thirty (30) day period. In situations of data corruption, Contractor shall reload any and all corrupted data to the secure FTP site as directed by the SFMTA for up to a one-year period if the data is available. Contractor shall provide on-going staff support to assist SFMTA staff with data transfer as needed and as directed by the SFMTA. Contractor shall respond within twenty-four (24) hours after being contacted by the SFMTA for assistance.
 - 3. Training services and as-needed expert witness support.
 - 4. Manual Clip subscription not to exceed 200 annually – GSA item number 4230-M0000-SUBS

2.04 Standards for Wires and Cables

- A. All wire sizes and insulation shall be based on the current carrying capability, voltage drop, mechanical strength, temperature and flexibility requirements, as well as fire resistance requirements for vehicle applications in accordance with DriveCam specifications

2.05 SFMTA Pricing Schedule

- A. The price of services are provided in the GSA Price Schedule and Addendum A.

2.06 Additional Services and Costs

- A. Additional costs for equipment, software, services, maintenance, and other work not specified in the GSA Schedule shall be provided in Addendum A.

PART 3 – EXECUTION

3.01 CONTRACTOR’S MANAGED SERVICES

- A. The video footage recorded by the DriveCam system of events in SFMTA’s revenue vehicles shall be stored and available on the Contractor’s website for ninety (90) days.
- B. Designated SFMTA staff shall be provided access by logging into the website and shall be able to view these video footages using Microsoft Windows 2000, XP or Vista, Internet Explorer 6.x or 7.x and network connections that permit streaming Silverlight 2.0 video (or at a minimum wmv video).
- C. In accordance with the terms of Contractor’s standard video clip retention policy, which may be updated by DriveCam from time to time, the video footage shall be accessible on the Contractor’s website for a period of 90 days after the event has been received.
- D. In accordance with the terms of Contractor’s standard video clip retention policy, which may be updated by Contractor from time to time, after 90 days, the Contractor shall archive the video footage for a period of 275 days and then destroy it. After the initial ninety (90) day period, Contractor will charge SFMTA its standard fee on a per event basis to retrieve any video event file from storage as set forth in Addendum A.
- E. The SFMTA shall have the capability to download every video footage from the website and store onto an electronic media during the initial 90-day period.
- F. The Contractor shall utilize DriveCam’s standard Scoring System.
- G. The Contractor agrees to visibly display the following or similar language in the DriveCam Online® portal - “Disclaimer: These comments are the interpretation of DriveCam based solely on our review of the DriveCam video event and do not take into consideration any

other information or factors that may relate to this driving event. These comments are provided for informational purposes only. ”

3.02 DISASTER RECOVERY

- A. The Contract shall implement the following for data recovery and uptime:
 - 1. 98% up time (other than downtime due to Unforeseen Events or regularly scheduled downtime)
 - 2. 24/7 monitoring
 - 3. Biometric access only
 - 4. Fire/Water resistant data center
 - 5. Redundant power
- B. The Contractor shall implement redundancy for all critical systems.
- C. The Contractor shall provide near time replication of all data in a separate data center to allow for disaster recovery.

3.03 WARRANTY

- A. The warranty provisions of GSA Schedule GS-35F-0623S shall apply.

PART 4 – CITY OWNERSHIP OF EQUIPMENT, DATA, DATABASE AND WORK PRODUCT

4.01 ESCROW AGREEMENT

As part of this Agreement, the SFMTA and Contractor entered into the Three-Party Escrow Service Agreement, dated June 9, 2009 attached hereto as **Attachment A** (the “Escrow Agreement”), the terms of which are incorporated into this Agreement. The Escrow Agreement has a one-year term that commenced on June 9, 2009 and automatically renews for additional one-year periods in accordance with its terms. The terms of the Software License and Maintenance Services Agreement (“License Agreement”) are set forth in **Attachment B the Software License and Maintenance Agreement.**

4.02 OWNERSHIP OF DATABASE AND WORK PRODUCT

Title to the products purchased by SFMTA hereunder (excluding title to the software) will pass to SFMTA upon Contractor’s delivery to the SFMTA. The software and data license and ownership provisions of the License Agreement shall apply to the BPA.

4.03 MAINTENANCE OF CONTRACTOR'S ONLINE DATABASE

The Contractor shall maintain the DriveCam Online database and provide access to the SFMTA data as described in Section 3.01 above.

4.04 CELLULAR TRANSMISSIONS

As part of the Escrow Agreement, the Contractor shall provide all necessary cellular transmission protocol information to the SFMTA to enable the SFMTA to redirect all cellular transmissions of the video recordings to the SFMTA.

PART 5 – EXPERT WITNESS

The Contractor shall provide a knowledgeable employee to serve as an expert witness and provide deposition and court testimony regarding DriveCam equipment, technology, policies and procedures, training, and services provided to the City as reasonably required by the City. Such as-needed services shall be provided as set forth in Addendum A, SFMTA Pricing Schedule, of this Statement of Work.

PART 6 –CUSTOMIZED REPORTS

The Contractor shall provide reports covering the following areas as requested by the SFMTA: (1) Program Performance Tools are reports that show trends and comparisons by group, vehicle, and drivers, (2) Coaches Tools are reports that show how the fleet, vehicle and drivers are performing, and (3) and Monitoring Tools are operational reports that show overdue statistics by group, vehicle, and driver.

PART 7 – INSURANCE REQUIREMENTS

- A. Without in any way limiting Contractor’s liability pursuant to the “Indemnification” section of this Agreement, Contractor must maintain in force, during the full Term of the Agreement, insurance in the following amounts and coverages:
1. Workers’ Compensation, in statutory amounts, with Employers’ Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
 2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
 4. Shipping Insurance with limits not less than the price charged by Contractor to the SFMTA for all Equipment Contractor shall provide to the SFMTA under this Agreement; said insurance coverage to be effective at any time the Equipment or any part of the Equipment is not in the possession of the Contractor or of the SFMTA. Contractor shall fully indemnify the City for any applicable deductible for any claim under said Shipping Insurance.
- B. Commercial General Liability, Commercial Automobile Liability Insurance, and Shipping Insurance and Inventory Insurance policies must provide the following:
1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
 2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and

that insurance applies separately to each insured against whom claim is made or suit is brought.

- C. Each policy on which SFMTA is an additional insured shall be endorsed to provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Melvyn Henry
SFMTA Safety Division
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

- D. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the Term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract Term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- E. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- F. Should any required insurance lapse during the Term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- G. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.
- H. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.
- I. Contractor will accept liability for all subcontractors work in performance of this contract and any sub-contractor work product, negligence, gross, or willful misconduct shall not be excluded from Contractor's insurance coverage as required under this agreement. Notwithstanding the foregoing, in no event shall Contractor's insurance coverage for actions by its subcontractors be required to exceed the coverage that would be afforded to actions by Contractor under such policies.

**PART 8 – INDEMNIFICATION; INCIDENTAL AND CONSEQUENTIAL DAMAGES;
LIMITATIONS OF LIABILITY**

Subject to the limitations set forth below, Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or

loss of or damage to Contractor's property, resulting directly from Contractor's negligence or willful misconduct in performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except to the extent such loss, damage, injury, liability or claim is the result of negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts. Notwithstanding the foregoing, (i) the City acknowledges and agrees that Contractor makes no guarantee that driving will be risk-free as a result of the use of Contractor's products and services, (ii) in no event shall Contractor be required to indemnify City for damages caused by City employees, and (iii) Contractor shall not have any obligation to indemnify City against wrongful discharge or similar employment claims by City's employees except to the extent a wrongful discharge is due to Contractor tampering with video events or otherwise providing City with a video event containing a material inaccuracy due to Contractor's actions.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Subject to the limitations set forth below, Contractor shall be responsible for incidental and consequential damages resulting from its indemnification obligations above. Nothing in this Agreement shall constitute a waiver of limitation of any rights that SFMTA may have under applicable law.

IN NO EVENT SHALL CONTRACTOR OR ITS LICENSORS, SUPPLIERS, OR DISTRIBUTORS (COMBINED) BE LIABLE UNDER THIS AGREEMENT, THE BLANKET PURCHASE AGREEMENT, THE GSA CONTRACT OR ANY OTHER AGREEMENT INCORPORATED INTO SUCH AGREEMENTS BE REFERENCE, FOR ANY AMOUNTS EXCEEDING THE LESSER OF (i) THOSE ACTUALLY PAID BY SFMTA TO CONTRACTOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION ACCRUES OR (ii) ONE MILLION DOLLARS (\$1,000,000).

PART 9 - PROPRIETARY OR CONFIDENTIAL INFORMATION

Contractor understands and agrees that, in the performance of the work or services, all information provided from the SFMTA shall be treated as confidential and not disclosed to any other third party. Further, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

Contractor agrees to provide access to any and all video recordings and database information to only those SFMTA employees who have been designated by the SFMTA to receive such information. Contractor shall not provide access to any SFMTA employee who has not be designated to receive this information.

PART 10 – PAYMENT

The SFMTA shall pay for the cost of the services, equipment and hardware ordered hereunder within 30 days after the date indicated on Contractor's invoice(s).

The Contractor shall invoice the SFMTA on a monthly basis for Managed Services including program management, training and implementation, daily downloads of recorded events from all SFMTA vehicles, filtering of these events, factual reporting of driving behavior, performance and results reporting, and hosting and system maintenance after the services have been performed. Payment for Managed Services shall be due upon completion of such services.

The Contractor shall invoice the SFMTA for training classes after the classes have been performed as specified in GSA Schedule GS-35F-0623S.

PART 11 -- FORCE MAJEURE

Neither SFMTA nor the Contractor shall be liable under this BPA because of any failure or delay in the performance of its obligations on account of strikes, shortages, riots, fire, flood, storm, earthquake, acts of God, hostilities, or any other cause beyond its reasonable control (“Unforeseen Events”).

END OF SECTION

CITY

San Francisco Municipal Transportation Agency

Edward D. Reiskin
Director of Transportation

Approved as to Form:

Dennis J. Herrera
City Attorney

CONTRACTOR

Lytix, Inc.

By Signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

By: _____
John I. Kennedy
Deputy City Attorney

William J. Ruff
Vice President, Market Operations
9785 Towne Centre Drive
San Diego, CA 92121
City vendor number: 75814

AUTHORIZED BY:

**MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS**

Resolution No: _____

Adopted: _____

Attest: _____

Roberta Boomer, Secretary
SFMTA Board of Directors

BPA 2016-01

ADDENDUM A

SFMTA Pricing Schedule – July 1, 2016 – June 30, 2021	QTY	ANNUAL UNIT COST	ANNUAL EXTENDED COST
I. MANAGED SERVICES and TECHNICAL SERVICES			
Managed Services Includes: ASP hosting, cellular transport, and Managed Service	1,000	\$395.04	\$395,040
DriveCam Online Subscription	1,000	\$84.00	\$84,000
Archived Video Recovery	Per Request	\$478.59	N/A
II. MISCELLANEOUS SERVICES			
Expert Witness Includes: Travel and living expenses	N/A	\$1,000	N/A
III. TOTAL ANNUAL			\$479,040

ATTACHMENT A



EFFECTIVE DATE: _____

DEPOSIT ACCOUNT NUMBER: _____

THREE-PARTY ESCROW SERVICE AGREEMENT

1. Introduction.

This Three Party Escrow Service Agreement (the "Agreement") is entered into by and between DriveCam, Inc (the "Depositor"), and by City and County of San Francisco (the "Beneficiary") and by Iron Mountain Intellectual Property Management, Inc. ("Iron Mountain"). Depositor, Beneficiary, and Iron Mountain may be referred to individually as a "Party" or collectively as the "Parties" throughout this Agreement.

(a) The use of the term services in this Agreement shall refer to Iron Mountain services that facilitate the creation, management, and enforcement of software or other technology escrow accounts as described in Exhibit A attached hereto ("Services"). A Party shall request Services under this Agreement by submitting a work request for certain Iron Mountain Services ("Work Request") via written instruction or the online portal maintained at the website located at www.ironmountainconnect.com, or other websites owned or controlled by Iron Mountain that are linked to that website (collectively the "Iron Mountain Website").

(b) The Beneficiary and Depositor have, or will have, entered into the GSA Federal Supply Schedule Contract GS-35F-06238 ("GSA Contract") and the attached Software License Agreement, referred to herein as the "GSA Contract and Software License Agreement" (collectively referred to herein as the "License Agreement(s)") conveying Intellectual property rights to the Beneficiary, and the Parties intend this Agreement to be considered as supplementary to such agreements, pursuant to Title 11 United States [Bankruptcy] Code, Section 365(n).

2. Depositor Responsibilities and Representations.

(a) Depositor shall make an initial deposit that is complete and functional of all proprietary technology and other materials covered under this Agreement ("Deposit Material") to Iron Mountain within thirty (30) days of the Effective Date. Depositor may also update Deposit Material from time to time during the Term (as defined below) of this Agreement provided a minimum of one (1) complete and functional copy of Deposit Material is deposited with Iron Mountain at all times. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to Iron Mountain using the form attached hereto as Exhibit B.

(b) Depositor represents that it lawfully possesses all Deposit Material provided to Iron Mountain under this Agreement and that any current or future Deposit Material liens or encumbrances will not prohibit, limit, or alter the rights and obligations of Iron Mountain under this Agreement. Depositor warrants that with respect to the Deposit Material, Iron Mountain's proper administration of this Agreement will not violate the rights of any third parties.

(c) Depositor represents that all Deposit Material is readable and useable in its then current form; if any portion of such Deposit Material is encrypted, the necessary decryption tools and keys to read such material are deposited contemporaneously.

(d) Depositor agrees, upon request by Iron Mountain, in support of Beneficiary's request for verification Services, to promptly complete and return the Escrow Deposit Questionnaire attached hereto as Exhibit Q. Depositor consents to Iron Mountain's performance of any level(s) of verification Services described in Exhibit A attached hereto and Depositor further consents to Iron Mountain's use of a subcontractor to perform verification Services. Any such subcontractor shall be bound by the same confidentiality obligations as Iron Mountain and shall not be a direct competitor to either Depositor or Beneficiary. Iron Mountain shall be responsible for the delivery of Services of any such subcontractor as if Iron Mountain had performed the Services. Depositor represents that all Deposit Material is provided with all rights necessary for Iron Mountain to verify such proprietary technology and materials upon receipt of a Work Request for such Services or agrees to use commercially reasonable efforts to provide Iron Mountain with any necessary use rights or permissions to use materials necessary to perform verification of the Deposit Material. Depositor agrees to reasonably cooperate with Iron Mountain by providing reasonable access to its technical personnel for verification Services whenever reasonably necessary.

3. Beneficiary Responsibilities and Representations.

(a) Beneficiary acknowledges that, as between Iron Mountain and Beneficiary, Iron Mountain's obligation is to maintain the Deposit Material as delivered by the Depositor and that, other than Iron Mountain's inspection of the Deposit Material (as described in Section 4) and the performance of any of the optional verification Services listed in Exhibit A, Iron Mountain has no other obligation regarding the completeness, accuracy, or functionality of the Deposit Material.

- (b) Beneficiary may submit a verification Work Request to Iron Mountain for one or more of the Services defined in Exhibit A attached hereto and consents to Iron Mountain's use of a subcontractor if needed to provide such Services. Beneficiary warrants that Iron Mountain's use of any materials supplied by Beneficiary to perform the verification Services described in Exhibit A is lawful and does not violate the rights of any third parties.
 - (c) As between the Depositor and the Beneficiary, in the event of a release of the Deposit Material in accordance with this Agreement, the Beneficiary warrants that it shall comply strictly with the provisions set forth in Exhibit C with respect to its "Right to Use Following Release." Accordingly, Beneficiary will indemnify, defend, and hold the Depositor harmless from any and all loss, damage, injury, or liability, including reasonable legal fees and expenses, which the Depositor may suffer as a result of any unauthorized use of the Deposit Material or any change not approved by the Depositor that is made to the Deposit Material following the release of the Deposit Material to the Beneficiary. The foregoing indemnity shall include, but is not limited to, any and all losses, damages, injury or liabilities, which the Depositor suffers under any alleged negligence claim or action, or any product liability, strict liability, or infringement claim or action arising from any unauthorized modification or variation of the Deposit Material by the Beneficiary.
4. **Iron Mountain Responsibilities and Representations.**
- (a) Iron Mountain agrees to use commercially reasonable efforts to provide the Services requested by Authorized Person(s) (as identified in the "Authorized Person(s)/Notices Table" below) representing the Depositor or Beneficiary in a Work Request. Iron Mountain may reject a Work Request (in whole or in part) that does not contain all required information at any time upon notification to the Party originating the Work Request.
 - (b) Iron Mountain will conduct a visual inspection upon receipt of any Deposit Material and associated Exhibit B. If Iron Mountain determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit B, Iron Mountain will notify Depositor of such discrepancies and notate such discrepancy on the Exhibit B.
 - (c) Iron Mountain will provide notice to the Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement.
 - (d) Iron Mountain will work with a Party who submits any verification Work Request for Deposit Material covered under this Agreement to either fulfill any standard verification Services Work Request or develop a custom Statement of Work ("SOW"). Iron Mountain and the requesting Party will mutually agree in writing to an SOW on terms and conditions that include but are not limited to: description of Deposit Material to be tested; description of verification testing; requesting Party responsibilities; Iron Mountain responsibilities; Service Fees; invoice payment instructions; designation of the paying Party; designation of authorized SOW representatives for both the requesting Party and Iron Mountain with name and contact information; and description of any final deliverables prior to the start of any fulfillment activity. After the start of fulfillment activity, each SOW may only be amended or modified in writing with the mutual agreement of both Parties, in accordance with the change control procedures set forth therein. If the verification Services extend beyond those described in Exhibit A, the Depositor shall be a necessary Party to the SOW governing the Services.
 - (e) Iron Mountain will hold and protect Deposit Material in physical or electronic vaults that are either owned or under the control of Iron Mountain, unless otherwise agreed to by all the Parties.
 - (f) Upon receipt of written instructions by both Depositor and Beneficiary, Iron Mountain will permit the replacement or removal of previously submitted Deposit Material. The Party making such request shall be responsible for getting the other Party to approve the joint instructions.
 - (g) Should transport of Deposit Material be necessary in order for Iron Mountain to perform Services requested by Depositor or Beneficiary under this Agreement, Iron Mountain will use a commercially recognized overnight carrier such as Federal Express or United Parcel Service. Iron Mountain will not be responsible for any loss or destruction of, or damage to, such Deposit Material while in the custody of the common carrier.

5. **Payment.**

The Party responsible for payment designated in Exhibit A ("Paying Party") shall pay to Iron Mountain all fees as set forth in the Work Request ("Service Fees"). Except as set forth below, all Service Fees are due within thirty (30) calendar days from the date of invoice in U.S. currency and are non-refundable. Iron Mountain may update Service Fees with a ninety (90) calendar day written notice to the Paying Party during the Term of this Agreement (as defined below). The Paying Party is liable for any taxes (other than Iron Mountain income taxes) related specifically to Services purchased under this Agreement or shall present to Iron Mountain an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice. Any Service Fees not collected by Iron Mountain when due shall bear interest until paid at a rate of one percent (1%) per month (12% per annum) or the maximum rate permitted by law, whichever is less. Notwithstanding the non-performance of any obligations of Depositor to deliver Deposit Material under the License Agreement or this Agreement, Iron Mountain is entitled to be paid all Service Fees that accrue during the Term of this Agreement.

6. **Term and Termination.**

- (a) The term of this Agreement is for a period of one (1) year from the Effective Date ("Initial Term") and will automatically renew for additional one (1) year terms ("Renewal Term") (collectively the "Term"). This Agreement shall continue in full force and effect until one of the following events occur: (i) Depositor and Beneficiary provide Iron Mountain with sixty (60) days' prior written joint notice of their intent to terminate this Agreement; (ii) Beneficiary provides Iron Mountain and

Depositor with sixty (60) days' prior written notice of its intent to terminate this Agreement; (iii) the Agreement terminates under another provision of this Agreement; or (iv) any time after the Initial Term, Iron Mountain provides a sixty (60) days' prior written notice to the Depositor and Beneficiary of Iron Mountain's intent to terminate this Agreement. If the Effective Date is not specified above, then the last date noted on the signature blocks of this Agreement shall be the Effective Date.

- (b) Unless the express terms of this Agreement provide otherwise, upon termination of this Agreement, Iron Mountain shall return the Deposit Material to the Depositor. Unless otherwise directed by Depositor, Iron Mountain will use a commercially recognized overnight common carrier such as Federal Express or United Parcel Service to return the Deposit Material to the Depositor. Iron Mountain will not be responsible for any loss or destruction of, or damage to, such Deposit Material while in the custody of the common carrier. If reasonable attempts to return the Deposit Material to Depositor are unsuccessful, Iron Mountain shall destroy the Deposit Material.
- (c) In the event of the nonpayment of undisputed Service Fees owed to Iron Mountain, Iron Mountain shall provide all Parties to this Agreement with written notice of Iron Mountain's intent to terminate this Agreement. Any Party to this Agreement shall have the right to make the payment to Iron Mountain to cure the default. If the past due payment is not received in full by Iron Mountain within thirty (30) calendar days of the date of such written notice, then Iron Mountain shall have the right to terminate this Agreement at any time thereafter by sending written notice to all Parties. Iron Mountain shall have no obligation to perform the Services under this Agreement (except those obligations that survive termination of this Agreement, which includes the confidentiality obligations in Section 9) so long as any undisputed Service Fees due Iron Mountain under this Agreement remain unpaid.

7. Infringement Indemnification.

Anything in this Agreement to the contrary notwithstanding, Depositor at its own expense shall defend and hold Beneficiary and Iron Mountain (the "Indemnified Party") fully harmless against any claim or action asserted against the Indemnified Party (specifically including costs and reasonable attorneys' fees associated with any such claim or action) to the extent such claim or action is based on an assertion that Iron Mountain's proper administration of this Agreement or Beneficiary's use of the Deposit Material, within the scope of this Agreement, infringes any patent, copyright, license or other proprietary right of any third party. When the Indemnified Party has notice of a claim or action, it shall promptly notify Depositor in writing. At its option, Depositor may elect to control defense of such claim or action and may elect to enter into a settlement agreement, provided that no such settlement or defense shall include any admission or implication of wrongdoing on the part of the Indemnified Party without such Party's prior written consent, which consent shall not be unreasonably delayed or withheld. Iron Mountain shall have the right to employ separate counsel and participate in the defense of any claim at its own expense.

8. Warranties.

- (a) IRON MOUNTAIN WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER CONSISTENT WITH THE MEASURES IRON MOUNTAIN TAKES TO PROTECT ITS OWN INFORMATION OF A SIMILAR NATURE, BUT IN NO CASE LESS THAN A REASONABLE LEVEL OF CARE. EXCEPT AS SPECIFIED IN THIS SECTION, ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. AN AGGRIEVED PARTY MUST NOTIFY IRON MOUNTAIN PROMPTLY UPON LEARNING OF ANY CLAIMED BREACH OF ANY WARRANTY AND, TO THE EXTENT ALLOWED BY APPLICABLE LAW, SUCH PARTY'S REMEDY FOR BREACH OF THIS WARRANTY SHALL BE SUBJECT TO THE LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES WAIVER IN THIS AGREEMENT. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.
- (b) Depositor warrants that all Depositor information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Depositor information during the Term of this Agreement.
- (c) Beneficiary warrants that all Beneficiary information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Beneficiary information during the Term of this Agreement.

9. Confidential Information.

Iron Mountain shall have the obligation to implement and maintain safeguards designed to protect the confidentiality of the Deposit Material. Except as provided in this Agreement Iron Mountain shall not use or disclose the Deposit Material. Iron Mountain shall not disclose the terms of this Agreement to any third Party. If Iron Mountain receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, Iron Mountain will promptly notify the Parties to this Agreement unless prohibited by law. After notifying the Parties, Iron Mountain may comply in good faith with such order. It shall be the responsibility of Depositor or Beneficiary to challenge any such order; provided, however, that Iron Mountain does not waive its rights to present its position with respect to any such order. Iron Mountain will cooperate with the Depositor or Beneficiary, as applicable, to support efforts to quash or limit any subpoena, at such Party's expense. Any Party requesting additional assistance shall pay Iron Mountain's standard charges or as quoted upon submission of a detailed request.

10. Limitation of Liability.

EXCEPT FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (IV) THE INFRINGEMENT INDEMNIFICATION OBLIGATIONS OF SECTION 7, ALL OTHER LIABILITY RELATED TO THIS AGREEMENT, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS.

11. Consequential Damages Waiver.

IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES (EXCLUDING SUBSTITUTE ESCROW SERVICES), OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

12. General.

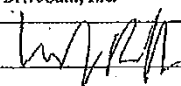
- (a) Incorporation of Work Requests. All valid Depositor and Beneficiary Work Requests are incorporated into this Agreement.
- (b) Purchase Orders. In the event that the Paying Party issues a purchase order or other instrument used to pay Service Fees to Iron Mountain, any terms and conditions set forth in the purchase order which constitute terms and conditions which are in addition to those set forth in this Agreement or which establish conflicting terms and conditions to those set forth in this Agreement are expressly rejected by Iron Mountain.
- (c) Right to Make Copies. Iron Mountain shall have the right to make copies of all Deposit Material as reasonably necessary to perform the Services. Iron Mountain shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on Deposit Material onto any copies made by Iron Mountain. Any copying expenses incurred by Iron Mountain as a result of a Work Request to copy will be borne by the Party requesting the copies. Iron Mountain may request Depositor's reasonable cooperation in promptly copying Deposit Material in order for Iron Mountain to perform this Agreement.
- (d) Choice of Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the Commonwealth of Massachusetts, USA, as if performed wholly within the state and without giving effect to the principles of conflicts of laws.
- (e) Authorized Person(s). Depositor and Beneficiary must each authorize and designate one person whose actions will legally bind such Party ("Authorized Person" who shall be identified in the Authorized Person(s) Notices Table of this Agreement or such Party's legal representative) and who may manage the Iron Mountain escrow account through the Iron Mountain website or written instruction. The Authorized Person for each the Depositor and Beneficiary will maintain the accuracy of their name and contact information provided to Iron Mountain during the Term of this Agreement.
- (f) Right to Rely on Instructions. With respect to Release of Deposit Material or the destruction of Deposit Material, Iron Mountain shall rely on instructions from a Party's Authorized Person(s). In all other cases, Iron Mountain may act in reliance upon any instruction, instrument, or signature reasonably believed by Iron Mountain to be genuine and from an Authorized Person(s), officer, or other employee of a Party. Iron Mountain may assume that such representative of a Party to this Agreement who gives any written notice, request, or instruction has the authority to do so. Iron Mountain will not be required to inquire into the truth of, or evaluate the merit of, any statement or representation contained in any notice or document reasonably believed to be from such representative.
- (g) Force Majeure. No Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, earthquake, labor disputes, shortages of supplies, riots, war, acts of terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
- (h) Notices. All notices regarding Exhibit C (Release of Deposit Material) shall be sent by commercial express mail or other commercially appropriate means that provide prompt delivery and require proof of delivery. All other correspondence, including invoices, payments, and other documents and communications, may be sent electronically or via regular mail. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice to the last known address of the other Parties that is relied on herein, that is refused, unclaimed, or undeliverable shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities, or through messenger or commercial express delivery service.
- (i) No Waiver. No waiver of any right under this Agreement by any Party shall constitute a subsequent waiver of that or any other right under this Agreement.

- (j) **Assignment.** No assignment of this Agreement by Depositor or Beneficiary or any rights or obligations of Depositor or Beneficiary under this Agreement is permitted without the written consent of Iron Mountain, which shall not be unreasonably withheld or delayed. Iron Mountain shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless Iron Mountain receives clear, authoritative and conclusive written evidence of the change of Parties.
- (k) **Severability.** In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. If this paragraph becomes applicable and, as a result, the value of this Agreement is materially impaired for any Party, as determined by such Party in its sole discretion, then the affected Party may terminate this Agreement by written notice to the other Parties.
- (l) **Independent Contractor Relationship.** Depositor and Beneficiary understand, acknowledge, and agree that Iron Mountain's relationship with Depositor and Beneficiary will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.
- (m) **Attorneys' Fees.** In any suit or proceeding between the Parties relating to this Agreement, the prevailing Party will have the right to recover from the other(s) its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.
- (n) **No Agency.** No Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Parties or bind the other Parties in any respect whatsoever.
- (o) **Disputes.** Any dispute, difference or question relating to or arising among any of the Parties concerning the construction, meaning, effect or implementation of this Agreement or the rights or obligations of any Party hereof will be submitted to, and settled by arbitration by a single arbitrator chosen by the corresponding Regional Office of the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The Parties shall submit briefs of no more than 10 pages and the arbitration hearing shall be limited to two (2) days maximum. The arbitrator shall apply Massachusetts law. Unless otherwise agreed by the Parties, arbitration will take place in Boston, Massachusetts, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by regular mail or by commercial express mail, to the attorney for the Party or, if unrepresented, to the Party at the last known business address. If however, Depositor or Beneficiary refuse to submit to arbitration, the matter shall not be submitted to arbitration and Iron Mountain may submit the matter to any court of competent jurisdiction for an interpleader or similar action. Unless adjudged otherwise, any costs incurred by Iron Mountain, including reasonable attorney's fees and costs, shall be divided equally and paid by Depositor and Beneficiary.
- (p) **Regulations.** All Parties are responsible for and warrant, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations, including but not limited to: customs laws; import; export and re-export laws; and government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement.
- (q) **No Third Party Rights.** This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the Parties hereto.
- (r) **Entire Agreement.** The Parties agree that this Agreement, which includes all the Exhibits attached hereto and all valid Work Requests and SOWs submitted by the Parties, is the complete agreement between the Parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. This Agreement may only be modified by mutual written agreement of all the Parties.
- (s) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (t) **Survival.** Sections 6 (Term and Termination), 7 (Infringement Indemnification), 8 (Warranties), 9 (Confidential Information), 10 (Limitation of Liability), 11 (Consequential Damages Waiver), and 12 (General) of this Agreement shall survive termination of this Agreement or any Exhibit attached hereto.

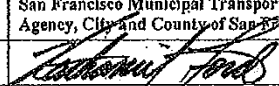
(balance of this page left intentionally blank – signature page follows)

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date by their authorized representatives:

DEPOSITOR

COMPANY NAME:	DriveCam, Inc.
SIGNATURE:	
PRINT NAME:	William J. Ruff
TITLE:	Vice President - Finance
DATE:	2/26/09
EMAIL ADDRESS:	wjruff@drivecam.com

BENEFICIARY

COMPANY NAME:	San Francisco Municipal Transportation Agency, City and County of San Francisco
SIGNATURE:	
PRINT NAME:	Nathaniel P. Ford Sr.
TITLE:	Executive Director/CEO
DATE:	
EMAIL ADDRESS:	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

SIGNATURE:	
PRINT NAME:	
TITLE:	
DATE:	
EMAIL ADDRESS:	ipmclientservices@ironmountain.com

NOTE: AUTHORIZED PERSON(S)/NOTICES TABLE, BILLING CONTACT INFORMATION TABLE AND EXHIBITS FOLLOW

DEPOSITOR -- AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

PRINT NAME:	Brian Brown
TITLE:	Dir Corp IT
EMAIL ADDRESS:	bbrown@drvinc.com
ADDRESS 1:	8911 Balboa Ave
ADDRESS 2:	San Diego CA 92123
CITY/STATE/PROVINCE:	
POSTAL/ZIP CODE:	
PHONE NUMBER:	858-430-4000
FAX NUMBER:	

BENEFICIARY -- AUTHORIZED PERSON(S)/NOTICES TABLE

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

PRINT NAME:	Hao Elson
TITLE:	Principal Engineer
EMAIL ADDRESS:	Elson.hao@sintta.com
ADDRESS 1:	700 Pennsylvania Avenue
ADDRESS 2:	
CITY/STATE/PROVINCE:	San Francisco, CA
POSTAL/ZIP CODE:	94107
PHONE NUMBER:	415-401-3196
FAX NUMBER:	

IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.

All notices should be sent to ipmclientservices@ironmountain.com OR

Iron Mountain Intellectual Property Management, Inc., Attn: Client Services
2100 Norcross Parkway, Suite 150
Norcross, Georgia, 30071, USA.
Telephone: 800-875-5669
Facsimile: 770-239-9201

BILLING CONTACT INFORMATION TABLE

Please provide the name and contact information of the Billing Contact under this Agreement. All Invoices will be sent to this individual at the address set forth below.

DEPOSITOR

PRINT NAME:	
TITLE:	
EMAIL ADDRESS:	
STREET ADDRESS:	
PROVINCE/CITY/STATE:	
POSTAL/ZIP CODE:	
PHONE NUMBER:	
FAX NUMBER:	
PURCHASE ORDER #:	

BENEFICIARY

PRINT NAME:	Elson Hao
TITLE:	Principal Engineer
EMAIL ADDRESS:	Elson.hao@smta.com
STREET ADDRESS:	700 Pennsylvania Avenue
PROVINCE/CITY/STATE:	
POSTAL/ZIP CODE:	94107
PHONE NUMBER:	415-401-3196
FAX NUMBER:	
PURCHASE ORDER #:	

MUST BE COMPLETED EXHIBIT A - Escrow Service Work Request - Deposit Account Number:

SERVICE Check box (S) or add service	SERVICE DESCRIPTION - THREE PARTY ESCROW AGREEMENT All services are listed below. Services in shaded tables are required for every new escrow account set up. Some services may not be available under the Agreement.	ONE-TIME FEES	ANNUAL FEES	PAYING PARTY Check box to identify the Paying Party for each service (S)
<input checked="" type="checkbox"/> Setup Fee	Iron Mountain will setup a new escrow deposit account using a standard escrow agreement. Custom contracts are subject to the Custom Contract Fee noted below.	\$1250		<input type="checkbox"/> Depositor - OR - <input checked="" type="checkbox"/> Beneficiary
<input checked="" type="checkbox"/> Deposit Account Fee- including Escrow Management Center Access	Iron Mountain will set up one deposit account to manage and administrate access to Deposit Material that will be securely stored in controlled media vaults. Furthermore, Iron Mountain will provide account services that include unlimited deposits, electronic vaulting, access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests. An oversize fee of \$200 USD per 1.2 cubic foot will be charged for deposits that exceed 2.4 cubic feet.		\$1,000 \$700	<input type="checkbox"/> Depositor - OR - <input checked="" type="checkbox"/> Beneficiary <input type="checkbox"/> Depositor - OR - <input checked="" type="checkbox"/> Beneficiary
<input checked="" type="checkbox"/> Beneficiary Fee including Escrow Management Center Access	Iron Mountain will fulfill a Work Request to add a Beneficiary to an escrow deposit account and manage access rights associated with the account. Beneficiary will have access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests.			<input type="checkbox"/> Depositor - OR - <input checked="" type="checkbox"/> Beneficiary
<input checked="" type="checkbox"/> File List Test	Iron Mountain will fulfill a Work Request to perform a File List Test, which includes analyzing deposit media readability, file listing, creation of file classification table, virus scan, and assurance of completed deposit questionnaire. A final report will be sent to the Paying Party regarding the Deposit Material to ensure consistency between Depositor's representations (i.e., Exhibit B and Supplementary Questionnaire) and stored Deposit Material. Deposit must be provided on CD, DVD-R, or deposited FTP.	\$2,500	N/A	<input type="checkbox"/> Depositor - OR - <input checked="" type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 1 - Inventory and Analysis Test	Iron Mountain will perform an Inventory Test on the initial deposit, which includes Analyzing deposit media readability, virus scanning, developing file classification tables, identifying the presence/absence of build instructions, and identifying materials required to recreate the Depositor's software development environment. Output includes a report which will include build instructions, file classification tables and listings. In addition, the report will list required software development materials, including, without limitation, required source code languages and compilers, third-party software, libraries, operating systems, and hardware, as well as Iron Mountain's analysis of the deposit.	\$5,000 or based on SOW if custom work required	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 2 - Compile Test	Iron Mountain will fulfill a Work Request to perform a Deposit Compile Test, which includes the Inventory Test as described above plus recreating the Depositor's software development environment, compiling source files and modules, linking libraries and recreating executable code, pass/fail determination, creation of comprehensive build instructions with a final report sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 3 - Binary Comparison	Iron Mountain will fulfill a Work Request to perform one Deposit Compile Test Binary Comparison which includes a comparison of the files built from the Deposit Compile Test to the actual licensed technology on the Beneficiary's site to ensure a full match in file size, with a final report sent to the Requesting Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Level 4 - Full Usability	Iron Mountain will fulfill a Work Request to perform one Deposit Compile Test Full Usability which includes a confirmation that the built applications work properly when installed. A final report will be sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Deposit Tracking Notification	At least semi-annually, Iron Mountain will send an update reminder to Depositor. Thereafter, Beneficiary will be notified of last deposit.	N/A	\$375	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Dual/Remote Vaulting	Iron Mountain will fulfill a Work Request to store deposit materials in one additional location as defined within the Service Agreement. Duplicate storage request may be in the form of either physical media or electronic storage.	N/A	\$500	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Release Deposit Material	Iron Mountain will process a Work Request to release Deposit Material by following the specific procedures defined in Exhibit C "Release of Deposit Material" the Escrow Service Agreement.	\$500	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Add Custom Services	Iron Mountain will provide its Escrow Expert consulting based on a custom SOW mutually agreed to by all Parties.	\$175/hour	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary
<input type="checkbox"/> Custom Contract Fee	Custom contracts are subject to the Custom Contract Fee, which covers the review and processing of custom or modified contracts.	\$500	N/A	<input type="checkbox"/> Depositor - OR - <input type="checkbox"/> Beneficiary

Note: Parties may submit Work Requests via written instruction or electronically through the online portal.

EXHIBIT B
DEPOSIT MATERIAL DESCRIPTION

COMPANY NAME: _____ DEPOSIT ACCOUNT NUMBER: _____

DEPOSIT NAME _____ AND DEPOSIT VERSION _____

(Deposit Name will appear in account history reports)

DEPOSIT MEDIA (PLEASE LABEL ALL MEDIA WITH THE DEPOSIT NAME PROVIDED ABOVE)

MEDIA TYPE	QUANTITY	MEDIA TYPE	QUANTITY
<input type="checkbox"/> CD-ROM / DVD		<input type="checkbox"/> 3.5" Floppy Disk	
<input type="checkbox"/> DLT Tape		<input type="checkbox"/> Documentation	
<input type="checkbox"/> DAT Tape		<input type="checkbox"/> Hard Drive / CPU	
		<input type="checkbox"/> Circuit Board	

	TOTAL SIZE OF TRANSMISSION (SPECIFY IN BYTES)	# OF FILES	# OF FOLDERS
<input type="checkbox"/> Electronic Deposit			
<input type="checkbox"/> Other (please describe below): _____			

DEPOSIT ENCRYPTION (Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted? Yes or No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

Other required information _____

DEPOSIT CERTIFICATION (Please check the box below to Certify and Provide your Contact Information).

<input type="checkbox"/> I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Iron Mountain at the address below.	<input type="checkbox"/> Iron Mountain has inspected and accepted the above described Deposit Material either electronically or physically. Iron Mountain will notify Depositor of any discrepancies.
NAME: _____	NAME: _____
PRINT NAME: _____	PRINT NAME: _____
DATE: _____	DATE: _____
EMAIL ADDRESS: _____	
TELEPHONE NUMBER: _____	
FAX NUMBER: _____	

Note: If Depositor is physically sending Deposit Material to Iron Mountain, please label all media and mail all Deposit Material with the appropriate Exhibit B via commercial express carrier to the following address:

Iron Mountain Intellectual Property Management, Inc. Telephone: 800-875-5669
Attn: Vault Administration Facsimile: 770-239-9201
2100 Norcross Parkway, Suite 150
Norcross, GA 30071

FOR IRON MOUNTAIN USE ONLY - NOLED DISCREPANCIES ON VISUAL INSPECTION

ENCLOSURE 3

**City and County of San Francisco
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, California 94103**

**SOFTWARE LICENSE AND MAINTENANCE SERVICES AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND
LYTX, INC.**

**SFMTA 2016-78
(Lytx)**

This Software License Agreement (the “Agreement”) is made this first day of July, 2016, in the City and County of San Francisco, State of California, by and between: Lytx, Inc., 9785 Towne Center Drive, San Diego, CA, 94121, hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its San Francisco Municipal Transportation Agency, hereinafter referred to as “City”, “SFMTA”, or MUNI.

Recitals

WHEREAS, the City wishes to license certain software from Contractor; and,

WHEREAS, Contractor represents and warrants that it is qualified to provide such software and services required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

1. Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Acceptance Notice from the City to Contractor that the Licensed Software meets the specifications contained in the Documentation. City’s Acceptance of the Licensed Software shall be governed by the procedures set forth in Section 7.

Agreement This document and any attached appendices and exhibits, including any future written and executed amendments.

**Authorization;
Authorization document** This Software License Agreement, properly executed by San Francisco Municipal Transportation Agency, and certified by the Controller for the specific funding of this Agreement or any modification thereof.

Documentation	The technical publications relating to the use of the Licensed Software, such as reference, installation, administrative and programmer manuals, provided by Contractor to City.
Hardware	Contractor's video event recorders and associated hardware provided to City hereunder.
Licensed Software	The Object Code for version 5.4 of Contractor's Hindsight 20/20 software, and all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or printed form. The Authorization Document may identify more than one software product or more than one copy of any product.
Managed Services	The analysis and reporting of driving events captured by Contractor's video event recorders installed in the City's vehicles and certain other services to be provided by Contractor hereunder relating to City's access and use of the Licensed Software.
Object code	Machine readable compiled form of Licensed Software provided by Contractor.
Source code	The human readable compliable form of the Licensed Software to be provided by Contractor.
Specifications	The functional and operational characteristics of the Licensed Software as described in Contractor's current published product descriptions and technical manuals

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the City. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the City, unless otherwise indicated by the context.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject

to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration of this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3. Term of the Software License Agreement. Subject to Section 5, the license granted under this Agreement shall coincide with the subscription term for the Managed Services provided to the City under the GSA Federal Supply Schedule Contract GS-35F-0623S (the "GSA Contract") unless sooner terminated in accordance with the provisions of this Agreement. Licenses are purchased and apply on a per video event recorder (VER) basis for the applicable subscription term.

4. Effective Date of the Agreement. This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

5. License

a. Grant of License. Subject to the terms and conditions of this Agreement, Contractor grants City a non-exclusive and non-transferable **limited term** license to use the Licensed Software and Managed Services for City's internal fleet management purposes only to achieve the results described in the Statement of Work between the SFMTA and Contractor and the GSA Federal Supply Schedule Contract GS-35F-0623S, without the right to sublicense such rights, provided City unconditionally agrees to access and use the Licensed Software and Managed Services strictly in accordance with the Documentation and this Agreement ("License"). Under the License, City may print out, or otherwise make, printed copies ("Copies") of the reports, numeric results and other information and materials generated from City's access and use the Licensed Software and Managed Services for internal fleet management purposes only. Any updates, modifications, enhancements or new versions of the Licensed Software or Managed Services provided or made available to City by Contractor, in accordance with this Agreement, shall be considered Licensed Software and Managed Services subject to this Agreement. Contractor shall be entitled at any time and without liability to improve, modify, suspend, test, maintain, or repair the systems used by Contractor to provide the Managed Services in whole or in part and/or any other services rendered under this Agreement even if this requires temporarily suspending the operation of the Managed Services, provided that the Contractor shall use reasonable efforts to minimize all forms of disruption resulting therefrom. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Software License grants City no title or right of ownership in the Licensed Software.

b. Restrictions on Use. City is authorized to use the Licensed Software only for City's internal purposes and only on the Designated CPU or the Designated Site specified in the Authorization Document. City agrees that it will, through its best efforts, not use or permit the Licensed Software to be used in any manner, whether directly or indirectly, that would enable any other unauthorized person or entity to use the Licensed Software. Except as otherwise expressly provided in this Agreement, City agrees to: (a) only use the Licensed Software and Managed Services in the manner, and for the purpose, expressly specified in this Agreement; (b) not decompile, disassemble analyze or otherwise examine the Licensed Software and/or Managed Services for the purpose of reverse engineering, or facilitate or permit a third party to do so (except to the extent this restriction is expressly prohibited by applicable law); (c) not delete or in any manner alter any notice, disclaimers or other legends contained in the Licensed Software and

Managed Services or appearing on any screens, documents, reports, numeric results or other materials obtained by City through use of the Licensed Software and Managed Services (“Notices”); (d) reproduce and display all Notices on Copies City makes, in accordance with this Agreement; (e) not attempt to access any systems, programs or data of Contractor that are not licensed under this Agreement; (f) not copy, reproduce, republish, upload, post, transmit or distribute the Licensed Software or Managed Services, or any portion thereof, or facilitate or permit a third party to do so; and (g) not use any device or software to interfere or attempt to interfere with the property operation of the Licensed Software and Managed Services. Contractor may immediately terminate this Agreement in the event that City breaches the provisions of this Section 5.B.

6. Delivery

a. **Delivery.** The Licensed Software is embedded in the video event recorders to be delivered hereunder.

b. **Risk of Loss.** If any of the Licensed Software products are lost or damaged during shipment or before installation is completed, Contractor shall promptly replace such products, including the replacement of program storage media if necessary, at no additional charge to the City. If any of the Licensed Software products are lost or damaged while in the possession of the City, Contractor will promptly replace such products without charge, except for program storage media, unless supplied by the City.

7. Ownership of Data

As between Contractor and City, the City shall own the information, data and content captured by the video event recorders in City’s possession as well as the related scoring information and analysis of such video events provided to City by Contractor (“Data”). However, the Contractor and its subcontractors shall have the right to use such Data in connection with performance hereunder and to improve and expand Contractor’s products and services. Contractor shall have the right (which shall survive termination and expiration of this Agreement) to use and disclose the non-video and non-audio Meta-Data components of the Data for any purposes; provided that, Contractor does not indicate to any third party that such components were provided by, obtained from, or associated with, the City or City employees. Such usage rights shall continue and survive destruction of any video clips to which such Meta-Data components relate. For purposes of this Agreement, “Meta Data” means aggregated non-video and non-audio data that does not contain personally identifiable markings (for example, data relating to the forces triggering a risky driving event not the employee causing the event.)

8. Maintenance and Support.

a. Maintenance and Support Services

- 1) Maintenance and Support includes support for the Licensed Software and Hardware, in accordance with the terms and conditions set forth below. For purposes of this section, “Hardware” and “Licensed Software” refer only to hardware and software manufactured by Contractor.
- 2) Contractor shall use commercially reasonable efforts to provide the following support during Contractor’s normal business hours (8 a.m. to 5 p.m. Pacific Standard Time): answering of telephone calls at a toll-free customer support telephone number (866) 49-5861 and e-mail support@Lytx.com

- 3) City shall provide Contractor in writing with the name(s) and contact information of City's technical personnel who will liaison with Contractor regarding all technology-related matters. City may change such liaison(s) upon written notice to Contractor from time to time at reasonable intervals. Contractor shall not be obligated to provide support to any person other than the designated liaison(s).
- 4) Upon identification of a programming error in the Licensed Software, a malfunction in the Hardware, a problem in remotely accessing the Managed Services reports or data caused by Contractor, or other problems with respect to Contractor's provision of Services or Hardware hereunder, City shall promptly notify Contractor of such problems and provide Contractor with all information necessary for Contractor to locate and duplicate the problem. City agrees to provide Contractor with reasonable access (including, without limitation, remote access) to all necessary City personnel, facilities and equipment (including the Products) for the purpose of providing the support services hereunder.
- 5) For any problem for which City has given Contractor notice under Section 8.A, Contractor (or its service representative) shall during Contractor's normal business hours, use commercially reasonable efforts to correct the problem, including providing a temporary workaround if one is available and repairing or replacing the malfunctioning Hardware or part.
- 6) Contractor shall not be obligated to provide such support services if the Hardware malfunction is not reproducible or is caused by (a) City's negligence or misuse, accident, fire, variation or interruption of electricity; (b) to the extent performed by City or its representatives, failure to properly install, maintain or use the Hardware; (c) alterations made by anyone other than Contractor or its representatives to the Hardware or the hardware or software that interfaces with the Hardware after installation; (d) any attempt to service the Hardware other than by Contractor or its service representatives (including the addition or removal of any third party hardware, peripherals or software); or (e) any software, equipment, or materials not approved or supplied by Contractor.
- 7) Contractor shall not be obligated to provide such support if the programming error in the Licensed Software is not reproducible or is caused by (a) City's failure to implement all updates to the Licensed Software provided to City by Contractor or use of a superseded version of the Licensed Software; (b) City's negligence or misuse or accident; (c) to the extent performed by City or its representatives, failure to properly, install, maintain or use the Licensed Software; (d) alterations made by anyone other than Contractor or its representatives to the Licensed Software or the Hardware or software that interfaces with the Licensed Software after installation; (e) any attempt to service the Licensed Software other than by Contractor or its service representative (including the addition or removal of any third party hardware, peripherals or software); (f) combination of the Licensed Software with any accessory, equipment, software or part not approved by or not supplied by Contractor; or (g) third party software, equipment or materials not approved in writing or supplied by Contractor.

9. Future Maintenance Service Charges. Contractor shall provide software maintenance and support services as described in the GSA Contract.

10. Warranties: Right to Grant License. Contractor hereby warrants that it has title to and/or the authority to grant a license of the Licensed Software to the City.

11. Warranties: Conformity to Specifications. For a period of three (3) years, Contractor warrants that when the Licensed Software and all updates and improvements to the Licensed Software are delivered to City, they will substantially conform to the Documentation.

12. Infringement Indemnification.

- 1) Contractor shall indemnify and hold City and its officers, directors, agents and employees harmless from all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) actually awarded to a third party and resulting from infringement by the Licensed Software of any U.S. patent or copyright issued as of the date of this Agreement; provided that, Contractor is promptly notified of all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over their defense and settlement. Contractor shall not be responsible for any settlement it does not approve in writing.
- 2) If the Licensed Software becomes, or in Contractor's sole opinion is likely to become, the subject of an infringement claim or action, Contractor may in its discretion: (a) procure for City the right to continue using the Licensed Software; (b) replace or modify the Licensed Software so as to be free from infringement; or (c) accept return of the Licensed Software and refund the payments paid by City for such Licensed Software less a reasonable amount for use and damage.
- 3) Notwithstanding the provisions of Section 11(a) above, Contractor has no liability to City for (a) the combination of the Licensed Software with software, hardware or other materials not supplied or approved in writing by Contractor for use with the Licensed Software; 9b) the activities of City, after Contractor has notified City that such activities may result in such infringement; (c) use or operation of the Licensed Software other than in strict accordance with the applicable Documentation; or (d) the modification of the Licensed Software, or any thereof, unless such modification was made by Contractor, where such infringement would not have occurred but for such modifications.
- 4) THE FOREGOING PROVISIONS OF THIS SECTION 11 STATE CONTRACTOR'S ENTIRE LIABILITY, AND CITY'S EXCLUSIVE REMEDY, WITH RESPECT TO THE LICENSED SOFTWARE OR ANY PART THEREOF.

13. Payment. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until Licensed Software and services required under this Agreement are received from Contractor and approved by the City as being in accordance with this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

14. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City.

The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and

certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

15. Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique identifying number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

16. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

17. Taxes. Payment of any taxes, including possessory interest taxes, and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor.

18. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, the Licensed Software, although the unsatisfactory character of such work, or Licensed Software may not have been apparent or detected at the time such payment was made. Software, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

19. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor.

20. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees means that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

21. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

22. Indemnification and General Liability. Subject to the limitations set forth below, Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City and in not contributed to by any act of, or by any omission to perform some duty imposed

by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. Notwithstanding the foregoing, (i) the City acknowledges and agrees that Contractor makes no guarantee that driving will be risk-free as a result of the use of Contractor's products and services, (ii) in no event shall Contractor be required to indemnify City for damages caused by City employees, and (iii) Contractor shall not have any obligation to indemnify City against wrongful discharge or similar employment claims by City's employees except to the extent a wrongful discharge is due to Contractor tampering with video events or otherwise providing City with a video event containing a material inaccuracy due to Contractor's actions.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

23. Incidental and Consequential Damages. Subject to the limitations set forth below, Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver of limitation of any rights which City may have under applicable law. IN NO EVENT SHALL CONTRACTOR OR ITS LICENSORS, SUPPLIERS, OR DISTRIBUTORS (COMBINED) BE LIABLE UNDER THIS AGREEMENT, THE BLANKET PURCHASE AGREEMENT, THE GSA CONTRACT OR ANY OTHER AGREEMENT INCORPORATED INTO SUCH AGREEMENTS BE REFERENCE, FOR ANY AMOUNTS EXCEEDING THE LESSER OF (i) THOSE ACTUALLY PAID BY SFMTA TO CONTRACTOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CUASE OF ACTION ACCRUES OR (ii) ONE MILLION DOLLARS (\$1,000,000).

24. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 14 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

25. Force Majeure. Neither SFMTA nor the Contractor shall be liable under this Agreement because of any failure or delay in the performance of its obligations on account of strikes, shortages, riots, fire, flood, storm, earthquake, acts of God, hostilities, or any other cause beyond its reasonable control ("Unforeseen Events").

26. Nondisclosure. City agrees that it shall treat the Licensed Software with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the Licensed Software is Accepted by the City until the license is terminated as provided herein. The obligations of the City set forth above, however, shall not apply to the Licensed Software, or any portion thereof, which:

- a. is now or hereafter becomes publicly known;
- b. is disclosed to the City by a third party which the City has no reason to believe is not legally entitled to disclose such information;
- c. is known to the City prior to its receipt of the Licensed Software;
- d. is subsequently developed by the City independently of any disclosures made hereunder by Contractor;
- e. is disclosed with Contractor's prior written consent;
- f. is disclosed by Contractor to a third party without similar restrictions.

27. Proprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in the performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary data.

Contractor agrees to provide access to any and all video recordings and database information to only those SFMTA employees who have been designated by the SFMTA to receive such information. Contractor shall not provide access to any SFMTA employee who has not been designated to receive this information.

28. Termination

a. **Basis for Termination by Contractor.** Contractor shall have the right to terminate this Agreement if City is delinquent in making payments of any sum due under this Agreement and continues to be delinquent for a period of ninety days after the last day payment is due; provided, however, that written notice is given to City by Contractor of the expiration date of the ninety-day delinquency period at least ten days prior to the expiration date or, to terminate this Agreement if City commits any other breach of this Agreement and fails to remedy such breach within thirty days after receipt of written notice by Contractor of such breach.

b. **Basis for Termination by City.** City shall have the right, without further obligation or liability to Contractor (except as specified in Sections 29 (Protection of Private Information) and 30(c) (Disposition of Licensed Software on Termination) hereof): (i) to immediately terminate this Agreement or the applicable Authorization Document if Contractor commits any breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by City of such breach, in which event, Contractor shall reimburse City in the same manner as for the removal of the Licensed Software due to infringement under Section 13; or (ii) to terminate this Agreement or the applicable Authorization Document upon ninety (90) days prior written notice for any reason if the license granted hereunder is for any term other than perpetual. In the event the license granted is perpetual, termination of this Agreement or the applicable Authorization Document by City shall be effective upon receipt by Contractor of written notice of said termination.

29. Notice to the Parties. Except as otherwise set forth herein, all notices under this Agreement shall be in writing, and shall be deemed given when personally delivered, when sent by

confirmed fax, when sent by courier with confirmed receipt, or three days after being sent by prepaid certified or registered U.S. mail to the address of the party to be noticed as set forth herein or such other address as such party last provided to the other by written notice.

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, and e-mail, and shall be addressed as follows:

To City: Robin Courtney, Manager
SFMTA – System Safety Division
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Robin.courtney@sfmta.com

To Contractor: William J. Ruff
Lytx
9785 Towne Centre Drive
San Diego, CA 92121

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

30. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

31. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

32. Bankruptcy. In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

33. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

34. Sunshine Ordinance. In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

35. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

36. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

37. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

38. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

39. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

40. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- 3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Each policy on which SFMTA is an additional insured shall be endorsed to provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Robin Courtney
SFMTA Safety Division
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

d. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

e. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

f. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

g. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

h. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

i. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

j. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

k. Contractor will accept liability for all subcontractors work in performance of this contract and any sub-contractor work product, negligence, gross, or willful misconduct shall not be excluded from Contractor's insurance coverage as required under this agreement. Notwithstanding the foregoing, in no event shall Contractor's insurance coverage for actions by its subcontractors be required to exceed the coverage that would be afforded to actions by Contractor under such policies.

41. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

42. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

43. Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

44. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.

45. Severability. If any provision of the Agreement is held to be unenforceable by a court of competent jurisdiction, the Agreement shall be construed without such provision.

46. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws.

47. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

48. Signatories Have Read and Understand This Agreement. In signing this Agreement, the signatories affirm: (1) that they act as authorized employees and agents of the parties and have the authority to bind their respective employers; (2) that they have read, understand and will comply with the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

Lytx, Inc.

Edward D. Reiskin
Director of Transportation
San Francisco Municipal Transportation
Agency

By signing this Agreement, I certify that I
comply with the requirements of the
Minimum Compensation Ordinance, which
entitle Covered Employees to certain
minimum hourly wages and compensated and
uncompensated time off.

Approved as to Form:

Dennis J. Herrera
City Attorney

I have read and understood paragraph 35, the
City's statement urging companies doing
business in Northern Ireland to move towards
resolving employment inequities,
encouraging compliance with the MacBride
Principles, and urging

San Francisco companies to do business with
corporations that abide by the MacBride
Principles.

By:

John I. Kennedy
Deputy City Attorney

William J. Ruff
Vice President, Market Operations
9785 Towne Centre Drive
San Diego, CA 92121
City Vendor Number: 75814

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION
AGENCY BOARD OF DIRECTORS

Resolution No: _____

Adopted: _____

Attest: _____

Roberta Boomer, Secretary
SFMTA Board of Directors